

Before the
Administrative Hearing Commission
State of Missouri



LAURENCE LUM, D.O.,

Petitioner,

vs.

DEPARTMENT OF SOCIAL SERVICES,
MISSOURI MEDICAID AUDIT
AND COMPLIANCE UNIT,

Respondent.

No. 13-1492 SP

DECISION

We grant the Department of Social Services, Missouri Medicaid Audit and Compliance Unit's ("MMAC") motion to dismiss the complaint filed by Laurence Lum, D.O.

Procedure

On August 20, 2013, Lum filed a complaint stating that he was adversely affected by a final decision of MMAC assessing an overpayment. On September 20, 2011, MMAC filed a motion to dismiss the complaint as untimely ("the motion"), accompanied by affidavits of MMAC personnel. We gave Lum until October 7, 2013 to file a response to the motion, but he did not respond.

We may grant a motion to dismiss if we lack jurisdiction. Regulation 1 CSR 15-3.436(1)(A).¹ Because MMAC included matters outside the pleadings with the motion, we apply our standard for summary decision. Regulation 1 CSR 15-3.446(6). Under that standard, MMAC prevails if it establishes facts that entitle it to a favorable decision and Lum raises no genuine dispute as to such facts. Regulation 1 CSR 15-3.446(6)(A) and § 536.073.3.² The following facts are undisputed.

Findings of Fact

1. On May 30, 2013, Jessica E. Dresner, Director of MMAC, hand-delivered to Lum a final decision dated May 29, 2013, assessing an \$18,178.84 overpayment (the “overpayment letter”).

2. The overpayment letter contains the following language:

This is a final decision regarding administration of the medical assistance program in Missouri. Missouri Statute, Section 208.156, RSMo (2000) provides for an appeal of this decision.

If you were adversely affected by this decision, you may appeal this decision to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within 30 days from the date of mailing or delivery of this decision, whichever is earlier; except that claims of less than \$500 may be accumulated until such claims total that sum and, at which time, you have 90 days to file the petition. If any such petition is sent by registered or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered or certified mail, it will be deemed filed on the date it is received by the Commission.[³]

3. On August 20, 2013, this Commission received the complaint from Lum.

4. August 20, 2013, was more than 30 days after May 30, 2013.

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² Statutory references are to RSMo 2000 unless otherwise noted.

³ Motion Ex. A.

Conclusions of Law

We have jurisdiction of appeals from MMAC's determinations denying reimbursement for Medicaid services. Section 208.156.2. But the legislature has restricted our jurisdiction to those appeals filed within the time limits set forth in § 208.156.8. “The failure to comply with the statutory time limitations for appeal from an administrative agency decision, whether to another administrative body or to a circuit court, results in the lapse of subject matter jurisdiction and the loss of right of appeal.” *Fayette No. 1, Inc. v. Missouri Dept. of Social Services*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1993). We may order involuntary dismissal of a complaint for lack of jurisdiction and based on a preponderance of the evidence.

Section 208.156.8 provides:

Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections shall have thirty days from the date of mailing or delivery of a decision of the Department of social services or its designated division in which to file his petition for review with the administrative hearing commission except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time the provider shall have ninety days to file his petition.

MMAC has established by affidavit that it hand-delivered a notice of overpayment to Lum on May 30, 2013. It has also established that its notice included statutory language required by § 621.055.3, RSMo Supp. 2012. Therefore, any appeal from the overpayment letter is subject to the 30-day filing deadline. Because MMAC hand-delivered the denial letter, the time to appeal started on May 30, 2013, and ended on June 29, 2013.

Lum did not file the petition until August 20, 2013. The petition was untimely, and we lack jurisdiction to hear it.

Summary

We grant the motion to dismiss Lum's complaint.

SO ORDERED on October 23, 2013.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner